



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

SMC
Docket No: 05181-99
19 May 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: HM1 [REDACTED]
REVIEW OF NAVAL RECORD

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 dtd 1Jul99 w/attachments
(2) NPC-311 memo dtd 21Dec99
(3) NPC-61 memo dtd 19Jan00
(4) NPC-832C memo dtd 8Feb00
(5) Subject's naval record

1. Pursuant to reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that his naval record be corrected by removing the enlisted performance evaluation report for 16 March 1997 to 15 March 1998 and a service record page 13 ("Administrative Remarks") counseling entry dated 17 October 1997. Copies of the contested report and page 13 entry are in enclosure (1) at Tabs A and B.

2. The Board, consisting of Mses. Moidel and Taylor and Mr. Ensley, reviewed Petitioner's allegations of error and injustice on 18 May 2000, and pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. The contested report, submitted when Petitioner was a petty officer second class, evaluated his performance as a lab technician at the Baltimore Military Entrance Processing Station (MEPS). It rated him "2.0" (second lowest) in block 34 ("quality of work"). His other marks, except for one "4.0" (second best) in block 38 ("teamwork"), were "3.0" (third lowest). In blocks 45 and 46 ("promotion recommendation"), he was marked "promotable" (third lowest) with two other second class petty officers, while four were marked ahead of him and none below. The block 43 comment section included the following:

Has managed with difficulty the HIV/DAT [drug and alcohol testing] program. Timely documentation and meeting basic standards of the program have not been met.

...

Served as Drug Coordinator and responsible for the collection and documentation of samples for over 20,000 applicants. Quality control review prior to shipping to laboratory testing facility was lacking, but has improved during the latter part of this evaluation period.

Petitioner submitted a rebuttal statement dated 10 April 1998 disputing this evaluation. The reporting senior's response dated 17 April 1998, which maintained the evaluation was fair, included the following statement: "During this rating period he has received written counseling, which includes a Page 13 entry, that addressed his duty performance." The reporting senior also stated Petitioner had received verbal counseling on several occasions during the reporting period. Petitioner's rebuttal and the reporting senior's response, copies of which are in enclosure (1) at Tab A, have been filed in Petitioner's record with the contested evaluation.

c. The contested page 13 entry states that Petitioner was counseled regarding deficiencies in work performance, compromise of written regulations and policies, and use of chain of command. The page 13 further states that Petitioner was aware of his responsibilities, under the applicable regulation, as a DAT observer; however, he did not report up the chain of command that the regulation was being compromised. The entry does not reflect Petitioner's signature or his initials.

d. Petitioner alleges that the low marks he received on the contested evaluation, as well as the page 13 counseling entry, were in reprisal against him for having reported certain "unsavory" practices at the MEPS. He asserts the chain of command was "very upset" with him and another petty officer, a fellow laboratory technician, because they had advised personnel who were inspecting the MEPS that the chain of command had been notified of falsifications of official documents, but had done nothing about it. He says the first sergeant told him, in front of the other petty officer mentioned above, that the contested evaluation and counseling entry were given as punishment. Specifically concerning the page 13 entry, he further objects that he did not sign it, and it was placed in his record without his knowledge. He contends that he deserved a more favorable performance evaluation, and that he was never counseled concerning perceived shortcomings. He alleges that the first time he was made aware of any deficiencies was on 27 March 1998, when he received the contested evaluation.

e. On 10 July 1998, Petitioner had captain's mast, concerning the contested evaluation, with the reporting senior's immediate superior in command (ISIC). The resulting memorandum of 12 August 1998 from the ISIC, a copy of which Petitioner provided, stated that the mark of "2.0" on the evaluation was "inappropriate" because of a "lack of appropriate counseling." Although the ISIC conceded "there were indicators that some

counseling was done based on [Petitioner's] performance," he felt "it was not specific enough nor did it follow the required standards to be placed on [Petitioner's] evaluation." The ISIC memorandum said nothing about reprisal. Aside from this memorandum, Petitioner furnished no statements from other individuals in support of his application.

f. Enclosure (2) is an advisory opinion from PERS-311, the Navy Personnel Command (NPC) Performance Evaluation Branch. This opinion stated that on the basis of the information provided, it appears that counseling was performed on numerous occasions. This opinion further stated that the page 13 at issue was submitted to document Petitioner's performance and does not require his signature. PERS-311 concluded that Petitioner does not prove the contested performance evaluation to be unjust or in error. However, they recommended that the petition be forwarded to the Equal Opportunity Branch, PERS-61, for comment on Petitioner's allegation of retaliation; and that should this allegation be found to have merit, they would have no objection to the partial relief of removing the "2.0" mark in "quality of work."

g. In the advisory opinion at enclosure (3), PERS-61 stated it is their belief, from the information provided, that the contested evaluation is retaliatory in nature. Citing the ISIC memorandum, they recommended that the "2.0" mark in "quality of work" be raised to "3.0." They further recommended, if Petitioner's official record does include an unsigned page 13 counseling entry dated 17 October 1997, that it be removed.

h. Enclosure (4) is an advisory opinion from PERS-832C, the NPC Enlisted Performance Branch, recommending favorable action concerning the page 13 entry in question. They stated that while this entry does not appear in Petitioner's headquarters service record, they concur with PERS-61 in concluding that it should not be filed in his record.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board finds an injustice warranting partial relief, specifically, removal of the page 13 counseling entry.

The Board finds the page 13 entry should be removed, as recommended by PERS-61 and 832C. Because it is not signed or initialed by Petitioner, they accept his contention that it was placed in his record without his knowledge.

The Board substantially concurs with the PERS-311 opinion at enclosure (2) in finding the contested evaluation should stand as is. Notwithstanding the PERS-61 finding of reprisal, the Board is unable to make such a finding. In this regard, they note that Petitioner provided no supporting statements other than the ISIC memorandum; and that this memorandum made no mention of reprisal. Finally, the Board does not accept the ISIC conclusion that the mark of "2.0" in "quality of work" is inappropriate because of inadequate counseling. They particularly note the ISIC acknowledges that some counseling was performed. Further, they

observe that counseling takes many forms, so the recipient may not recognize it as such when it is provided.

In view of the above, the Board directs the following limited corrective action:

RECOMMENDATION:

a. That Petitioner's field service record be corrected by removing the service record page 13 ("Administrative Remarks") counseling entry dated 17 October 1997; that this entry not be filed in his headquarters record in the future; and in the event it is filed there, that it be removed without further direction from this Board.

b. That his record be corrected further by deleting the following from paragraph 2, third sentence, of the Memorandum for the Bureau of Naval Personnel (PERS-322) dated 17 April 1998, Subject: Statement to Record in Case of Petitioner, signed by Lieutenant Colonel [REDACTED], United States Army:

,which includes a Page 13 entry,

The sentence in which the material to be removed appears, when corrected, should read as follows:

During this rating period he has received written counseling that addressed his duty performance.

c. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.


d. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

e. That the remainder of Petitioner's request be denied.


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4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder


JONATHAN S. RUSKIN
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.


For W. DEAN PFEIFFER
Executive Director



DEPARTMENT OF THE NAVY

NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

3181-99

1610
PERS-311
21 DEC 99

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Via: PERS/BCNR Coordinator (PERS-00ZCB)

Subj: HM1 [REDACTED] USN, [REDACTED]

Ref: (a) BUPERSINST 1610.10, EVAL Manual

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests removal of the performance report for the period 16 March 1997 to 15 March 1998.

2. Based on our review of the material provided, we find the following:

a. A review of the member's digitized record revealed the report in question to be on file. The member signed the report indicating his desire to submit a statement to the report. A further review of the member's digitized record did not reveal the statement to be on file; however, the member provides with his petition a copy of the statement and command endorsement. The statement was found suitable for file, and is in the process of being placed in the member's digitized record.

b. The member feels the report in question was used as a punishment tool due to his reporting of unsavory practices at the Baltimore MEPS to higher authority.

c. The Commanding Officer, Military Entrance Processing Station (MEPS), Lieutenant Colonel [REDACTED] states in his endorsement to the member's statement that "During this reporting period he has received written counseling, which includes a Page 13 entry, that addressed his duty performance. Furthermore, he has been verbally advised of his shortcomings in his performance of his duties, on several occasions, during the evaluation period."

d. Per reference (a), Annex C, counseling on performance is mandatory and may be accomplished in different ways, i.e. written, verbal, etc. Based on the information provided, it

Subj: HMI [REDACTED], USN, [REDACTED]

appears that counseling was performed on numerous occasions throughout the reporting period. The Administrative Remarks, Page 13 dated 17 October 1997, was submitted to document the member's performance and does not require the member's signature.

e. The marks, comments, and recommendations are at the discretion of the reporting senior. They are not required to be consistent with previous or subsequent reports, and are not routinely open to challenge.

f. The member does not prove the report to be unjust or in error.

3. We recommend the member's petition be forwarded to the Director, Equal Opportunity Branch, PERS-61 for comment on the member's allegation of retaliation. Should the member's allegation of retaliation be found to have merit, we have no objection removing the "2.0" trait mark in "Quality of Work".

4. We recommend retention of the report in question.

[REDACTED]
[REDACTED]
[REDACTED]
Head, Performance
Evaluation Branch



DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

5181-99
1610
PERS-61/013
19 Jan 00

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION
OF NAVAL RECORDS

Via: Assistant for BCNR Matters, PERS-00ZCB

Subj: REQUEST FOR COMMENTS AND RECOMMENDATIONS IN CASE OF
HM1 [REDACTED], US [REDACTED]

Ref: (a) PERS-00ZCB memo 5420 of 29 Dec 99
(b) OPNAVINST 5354.1D Navy EO Manual

Encl: (1) BCNR File 05181-99

1. Reference (a) requested an advisory opinion in response to Petty Officer [REDACTED] request to remove the evaluation for the period 16 March 1997 through 15 March 1998 and a Page 13 dated 17 October 1997 from his permanent record. Enclosure (1) is returned.
2. Petty Officer [REDACTED] alleges that the report in question is retaliatory in nature because he had reported incidents of incorrect procedures at his command to the ISIC, MEPCOM Eastern Sector Command. His statements resulted in several investigations and brought unwanted attention to his command.
3. Petty Officer [REDACTED] requested CO's Mast with the Eastern Sector Commander concerning his evaluation. This resulted in the commander writing a memo to the Bureau of Naval Personnel dated 12 August 1998 that stated the 2.0 mark in quality of work was inappropriate.
4. Petty Officer [REDACTED] also alleges that a Page 13 entry dated 17 October 1997 was placed in his record without his knowledge. It is not signed or initialed by him.
5. From the information provided, I believe that the evaluation is retaliatory in nature per reference (b). As recommended by

Subj: REQUEST FOR COMMENTS AND RECOMMENDATIONS IN CASE OF
HM [REDACTED] USN [REDACTED]

the ISIC's memo of 12 August 1998, I recommend that the 2.0 mark in quality of work be raised to 3.0. If there is an unsigned Page 13 dated 17 October 1997 in Petty Officer [REDACTED] official record, I recommend it be removed.

[REDACTED]
Director, Professional
Relationships Division
(PERS-61)



DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

5181-99

5420
PERS-832C
8 Feb 2000

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION
OF NAVAL RECORDS (BCNR)

Via: PERS/BCNR Coordinator (PERS-00ZCB)

Subj: HM [REDACTED] M, USN [REDACTED]

Encl: (1) BCNR File 05181-99
(2) Petitioner's Microfiche Record

1. The petition and naval records of subject petitioner have been reviewed relative to his request for removal of derogatory material.

2. The review reflects that the 17 Oct 97 NAVPERS 1070/613 submitted with the BCNR petition is not in the microfiche provided or the EMPRS system. However, I concur with the PERS 61 opinion that the document should not be filed in the record. Therefore, favorable action on this petition is recommended.

[REDACTED]

Technical Advisor to the
Head, Enlisted Performance
Branch (PERS-832)